Wan Badaruddin bin Che Wan Basor Ali v CIMB Bank Bhd & Anor

HIGH COURT (ALOR SETAR) — SUIT NO KA-22NCC-7–06 OF 2022
MOHD JOHAN LEE J
4 AUGUST 2025

Civil Procedure — Jurisdiction — Conflict of jurisdiction between High Court and Shariah Court — Dispute over monies in joint fixed deposit account — Application to refer several questions of Islamic law to Shariah High Court — Question involving probate and administration — Question involving 'hibah' — Question involving applicability of survivorship clause — Whether questions ought to be referred to Shariah Court — Whether reference of Shariah questions ought to be made to Shariah Advisory Council of Bank Negara Malaysia — Central Bank of Malaysia Act 2009 s 56 — Courts of Judicature Act 1964 s 24A(1) — Federal Constitution art 121(1A) & Ninth Schedule, List I — Rules of Court 2012 O 92 r 4 — Syariah Courts (Kedah Darul Aman) Enactment 2008 s 13(3)(b)

Almarhum DYTM Tunku Hj Abdul Malik Ibni Almarhum Sultan Badlishah ('the late DYTM Tunku Malik') had opened a joint fixed deposit account ('the said account') with CIMB Bank Bhd ('the first defendant') and the plaintiff was named as a joint account holder of the said account. When the late DYTM Tunku Malik passed away, the 'Jemaah Pemangku Sultan Kedah' issued a written instruction to all financiers and banks to freeze all accounts belonging to the late DYTM Tunku Malik including the said account. Subsequently, via the order of the High Court, the second defendant was appointed as the administratrix of the estate of the late DYTM Tunku Malik and on the same day, the plaintiff's solicitors demanded the first defendant to release the monies in the said account to the plaintiff but this effort was in vain. The second defendant had also managed to obtain the High Court's order to include the said account as part of the Amended List of Assets of the late DYTM Tunku Malik's estate. The plaintiff then filed the main suit to seek a declaration that the plaintiff was entitled to withdraw all monies in the said account based on the survivorship clause. The second defendant on the other hand filed the present application ('encl 129') to refer several questions of Islamic law (Shariah) to the Kedah Shariah High Court under art 121(1A) of the Federal Constitution and/or s 24A(1) of the Courts of Judicature Act 1964 and/or s 13(3)(b) of the Syariah Courts (Kedah Darul Aman) Enactment 2008 and/or O 92 r 4 of the Rules of Court 2012. The questions were as followed: (a) whether the money in the said account was included in the estate of the late DYTM Tunku Malik that needed to be distributed to the heirs according to

'Faraid' and Islamic inheritance law ('the first question'); (b) whether there was any valid form of gift ('alang' or 'pemberian') made by the late DYTM Tunku Malik to the plaintiff regarding the money in the said account held by the first defendant ('the second question'); and (c) whether the right of survivorship contained in the terms of opening the said account by the late DYTM Tunku Malik and the plaintiff applied to the estate of the late DYTM Tunku Malik according to Shariah law ('the third question'). The plaintiff on the other hand had made an alternative argument that encl 129 should be dismissed on the basis that any reference on Shariah question should be channeled to the Shariah Advisory Council ('the SAC') of Bank Negara Malaysia ('the BNM') under Central Bank of Malaysia Act 2009 ('Act 701') ('the plaintiff's alternative argument').

Held, allowing encl 129 in part:

(1) The Shariah Courts did not have the ultimate jurisdiction over disputes concerning the inheritance of testate or intestate property (a matter under the State List) when such disputes also involved probate and administration (a civil matter under the Federal List). While the Shariah Court may issue a 'sijil faraid' to certified the beneficiaries and their shares/rights in the estates, the civil High Court was the forum for granting letters of administration and the handling of the administration aspect therein. In addition, since the plaintiff's original action was based on a breach of contract by the first defendant, it fell under civil jurisdiction, and thus no Shariah question arose. Therefore, the court held that the first question ought not to be referred to the Shariah Court (see paras 35–36 & 45–46).

(2) The plaintiff had admitted in his affidavit that his claim for the money was based on a 'pemberian ikhlas' (sincere gift) from the late DYTM Tunku Malik. Since 'pemberian ikhlas' meant a form of gift or 'hibah' in Islamic law, the plaintiff was bound by his own sworn statement. He could not blow hot and cold at the same time. Therefore, the determination of whether the plaintiff was beneficially entitled to the money as a 'pemberian ikhlas' or 'hibah' fell squarely within the jurisdiction of the Shariah Court, which was competent to decide on the law of gift. This indeed aligned with the principle affirmed in the Federal Court case of *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101. Therefore, the court held that the second question ought to be referred to the Shariah Court (see paras 63–65 & 71).

(3) It was clear that the first defendant, being a corporate entity incorporated under the Companies Act, lacked the capacity to profess any religion. As such, it fell outside the jurisdiction of the Shariah Court. Any attempt to subject the first defendant to Shariah proceedings would therefore be both unlawful and unconstitutional. Further, the dispute in the present

case primarily involved civil matter (banking and contract law), not Islamic law. The core dispute concerned the interpretation, validity, and applicability of the 'survivorship clause' in the said account. This fell squarely within the realm of banking and contract law, which were civil matters explicitly governed by the Federal List (List I, Ninth Schedule of the Federal Constitution). The court thus held that the third question ought not to be referred to the Shariah Court (see paras 83–84 & 92).

(4) Section 56 of Act 701 stipulated clearly that reference to the SAC was only confined to proceedings relating to Islamic financial business. In the present case, the said fixed deposit joint account involved conventional banking and not Islamic banking, as such, the SAC was not the proper forum. Further, the real dispute in the present case involved application of law of gift/'hibah' and Islamic law of succession (which fell under State List) whereas the SAC's statutory duty was confined to ascertainment of Islamic law for disputes concerning Islamic financial business. Thus, again the SAC of BNM had no business in the present dispute (see paras 94 & 97).

[Bahasa Malaysia summary

Almarhum DYTM Tunku Hj Abdul Malik Ibni Almarhum Sultan Badlishah ('Almarhum DYTM Tunku Malik') telah membuka akaun simpanan tetap bersama ('akaun tersebut') dengan CIMB Bank Bhd ('defendan pertama') dan plaintif dinamakan sebagai pemegang akaun bersama akaun tersebut. Apabila Almarhum DYTM Tunku Malik mangkat, Jemaah Pemangku Sultan Kedah telah mengeluarkan arahan bertulis kepada semua pembiaya dan bank untuk membekukan semua akaun milik Almarhum DYTM Tunku Malik termasuk akaun tersebut. Selepas itu, melalui perintah Mahkamah Tinggi, defendan kedua telah dilantik sebagai pentadbir harta pusaka allahyarham DYTM Tunku Malik dan pada hari yang sama, peguamcara plaintif menuntut defendan pertama untuk memberikan wang dalam akaun tersebut kepada plaintif tetapi usaha ini sia-sia. Defendan kedua juga telah berjaya mendapatkan perintah Mahkamah Tinggi untuk memasukkan akaun tersebut sebagai sebahagian daripada Senarai Pindaan Aset harta pusaka allahyarham DYTM Tunku Malik. Plaintif kemudiannya memfailkan saman utama untuk mendapatkan pengisytiharan bahawa plaintif berhak mengeluarkan semua wang dalam akaun tersebut berdasarkan klausa kemandirian. Defendan kedua pula telah memfailkan permohonan semasa ('lampiran 129') untuk merujuk beberapa persoalan undang-undang Islam (Shariah) kepada Mahkamah Tinggi Syariah Kedah di bawah perkara 121(1A) Perlembagaan Persekutuan dan/atau s 24A(1) Akta Mahkamah Kehakiman 1964 dan/atau s 13(3)(b) Enakmen Mahkamah Syariah (Kedah Darul Aman) 2008 dan/atau A 92 k 4 Kaedah-Kaedah Mahkamah 2012. Soalan-soalannya adalah seperti berikut: (a) sama ada wang dalam akaun tersebut termasuk dalam harta pusaka allahyarham DYTM Tunku Malik yang perlu diagihkan kepada waris

mengikut 'faraid' dan undang-undang pusaka Islam ('soalan pertama'); (b) sama ada terdapat apa-apa bentuk hadiah ('alang' atau 'pemberian') yang sah dibuat oleh allahyarham DYTM Tunku Malik kepada plaintif berkenaan wang dalam akaun tersebut yang dipegang oleh defendan pertama ('soalan kedua'); dan (c) sama ada hak kemandirian yang terkandung dalam syarat pembukaan akaun tersebut oleh allahyarham DYTM Tunku Malik dan plaintif terpakai kepada harta pusaka allahyarham DYTM Tunku Malik mengikut undang-undang Syariah ('soalan ketiga'). Plaintif sebaliknya telah membuat hujahan alternatif bahawa lampiran 129 harus ditolak atas dasar bahawa apa-apa rujukan mengenai persoalan Syariah hendaklah disalurkan kepada Majlis Penasihat Syariah ('MPS') Bank Negara Malaysia ('BNM') di bawah Akta Bank Negara Malaysia 2009 ('Akta 701') ('hujahan alternatif plaintif').

Diputuskan, membenarkan sebahagian lampiran 129:

(1) Mahkamah Syariah tidak mempunyai bidang kuasa muktamad ke atas pertikaian berkaitan pewarisan harta berwasiat atau harta tak berwasiat (perkara di bawah Senarai Negeri) apabila pertikaian tersebut turut melibatkan probet dan pentadbiran (perkara sivil di bawah Senarai Persekutuan). Walaupun Mahkamah Syariah boleh mengeluarkan 'sijil faraid' untuk memperakui benefisiari dan saham/hak mereka dalam harta pusaka, Mahkamah Tinggi sivil adalah forum bagi pemberian surat kuasa mentadbir dan pengendalian aspek pentadbiran di dalamnya. Di samping itu, oleh kerana tindakan asal plaintif adalah berdasarkan pelanggaran kontrak oleh defendan pertama, ia terletak di bawah bidang kuasa sivil, dan oleh itu tiada persoalan Syariah yang timbul. Oleh itu, mahkamah berpendapat bahawa soalan pertama tidak sepatutnya dirujuk kepada Mahkamah Syariah (lihat perenggan 35–36 & 45–46).

(2) Plaintif telah mengakui dalam afidavitnya bahawa tuntutannya ke atas wang tersebut adalah berdasarkan 'pemberian ikhlas' (hadiah ikhlas) daripada Allahyarham DYTM Tunku Malik. Memandangkan 'pemberian ikhlas' bermaksud satu bentuk pemberian atau 'hibah' dalam undang-undang Islam, plaintif terikat dengan akuan bersumpahnya sendiri. Dia tidak boleh 'blow hot and cold' pada masa yang sama. Oleh itu, penentuan sama ada plaintif berhak mendapat wang tersebut sebagai 'pemberian ikhlas' atau 'hibah' terletak dalam bidang kuasa Mahkamah Syariah, yang kompeten untuk membuat keputusan berhubung undang-undang pemberian. Ini sememangnya sejajar dengan prinsip yang ditegaskan dalam kes Mahkamah Persekutuan *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101. Oleh itu, mahkamah berpendapat bahawa soalan kedua perlu dirujuk kepada Mahkamah Syariah (lihat perenggan 63–65 & 71).

(3) Adalah jelas bahawa defendan pertama, sebagai entiti korporat yang

diperbadankan di bawah Akta Syarikat, tidak mempunyai keupayaan untuk menganuti mana-mana agama. Oleh yang demikian, ia berada di luar bidang kuasa Mahkamah Syariah. Apa-apa percubaan untuk meletakkan defendan pertama kepada prosiding Syariah oleh itu adalah menyalahi undang-undang dan tidak berperlembagaan. Selanjutnya, pertikaian dalam kes semasa terutamanya melibatkan perkara sivil (perbankan dan undang-undang kontrak), bukan undang-undang Islam. Pertikaian teras adalah berkaitan dengan tafsiran, keabsahan, dan kebolehgunaan 'klausa kemandirian' dalam akaun tersebut. Ini termasuk dalam bidang undang-undang perbankan dan kontrak, yang merupakan perkara sivil yang dikawal secara jelas oleh Senarai Persekutuan (Senarai I, Jadual Kesembilan Perlembagaan Persekutuan). Oleh itu, mahkamah memutuskan bahawa soalan ketiga tidak sepatutnya dirujuk kepada Mahkamah Syariah (lihat perenggan 83–84 & 92).

(4) Seksyen 56 Akta 701 menyatakan dengan jelas bahawa rujukan kepada MPS hanya terhad kepada prosiding berkaitan perniagaan kewangan Islam. Dalam kes semasa, akaun bersama simpanan tetap tersebut melibatkan perbankan konvensional dan bukan perbankan Islam, oleh itu, MPS bukanlah forum yang sepatutnya. Selanjutnya, pertikaian sebenar dalam kes semasa melibatkan penggunaan undang-undang hadiah/ 'hibah' dan undang-undang penggantian Islam (yang termasuk dalam Senarai Negeri) manakala kewajipan berkanun MPS terhad kepada penentuan undang-undang Islam untuk pertikaian berkaitan perniagaan kewangan Islam. Oleh itu, sekali lagi MPS BNM tidak mempunyai urusan dalam pertikaian semasa (lihat perenggan 94 & 97).]

Cases referred to

Arab-Malaysian Finance Bhd v Taman Ihsan Jaya Sdn Bhd & Ors (Koperasi Seri Kota Bukit Cheraka Bhd, third party) [2008] 5 MLJ 631, HC (refd)

Dahlia Dhaima bt Abdullah v Majlis Agama Islam Selangor and another appeal [2025] 1 MLJ 334, FC (folld)

Iki Putra bin Mubarak v Kerajaan Negeri Selangor & Anor [2021] 2 MLJ 323, FC (folld)

Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals [2018] 1 MLJ 545; [2018] 3 CLJ 145, FC (refd)

Jabatan Agama Islam Wilayah Persekutuan & Ors v Berjaya Books Sdn Bhd & Ors [2015] 3 MLJ 65, CA (refd)

JRI Resources Sdn Bhd v Kuwait Finance House (M) Bhd (President of Association of Islamic Banking Institutions Malaysia & Anor, interveners) [2019] 3 MLJ 561; [2019] 5 CLJ 569, FC (refd)

Jumaaton dan satu lagi lwn Raja Hizaruddin [1998] 6 MLJ 556, CA (refd)

Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor [2006] 4 MLJ 705, CA (refd)

A *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101, FC (folld)
Mohamad Taupik Mohamad Nor & yang lain lwn Siti Rahman Mohd Noor & Yang Lain [2025] MLJU 1927; [2016] CLJU 1462, HC (refd)
Pathmanathan a/l Krishnan (also known as Muhammad Riduan bin Abdullah)
B *v Indira Gandhi a/p Mutho and other appeals* [2016] 4 MLJ 455, CA (refd)
Potensi Bernas Sdn Bhd v Datu Badaruddin Datu Mustapha [2009] MLJU 1972; [2009] 8 CLJ 573, HC (refd)
Public Bank Bhd v New Ace Digital Print Sdn Bhd & Anor [2019] 3 MLJ 421; [2019] CLJU 294, FC (distd)
C *SIS Forum (M) & Anor v Jawatankuasa Fatwa Negeri Selangor & Ors* [2025] 4 MLJ 625; [2025] 7 CLJ 179, FC (refd)
Siti Hasnah Vangarama Abdullah v Tun Dr Mahathir Mohamad (as the President of Perkim) & Ors [2012] MLJU 1819; [2012] 7 CLJ 845, CA (refd)
Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals
D [2008] 2 MLJ 147, FC (refd)

Legislation referred to

Central Bank of Malaysia Act 2009 s 56
Companies Act 2016
E Courts of Judicature Act 1964 s 24A(1)
Federal Constitution art 121(1A), Ninth Schedule, List I, List II
Financial Services Act 2013
Islamic Financial Services Act 2013
Rules of Court 2012 O 34, O 92 r 4
F

Mohd Jamil Yaacob (Srihana Mohamad & Partners) for the plaintiff.
Saresh Mahendran (Shearn Delamore & Co) for the first defendant.
Hizri Hasshan (with Dorina Abdullah) (Najib Hisham Isa) for the second defendant.
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Mohd Johan Lee J:

FACTS OF THE CASE

H **[1]** This is an application filed by the second defendant in encl 129 ('this application') to seek permission to refer several Shariah issues to the Kedah Shariah High Court. This referral is sought under art 121(1A) of the Federal Constitution and/or s 24A(1) of the Courts of Judicature Act 1964 and/or s 13(3)(b) of the Shariah Courts (Kedah Darul Aman) Enactment 2008 and/or
I under the inherent jurisdiction of the court pursuant to O 92 r 4 of the Rules of Court 2012.

[2] On 12 July 2011, Almarhum DYTM Tunku Hj Abdul Malik Ibni Almarhum Sultan Badlishah (the 'late DYTM Tunku Malik'), at the age of

82 years old, opened a joint fixed deposit account (Account No 5003413704) ('joint fixed deposit account') with the first defendant. The plaintiff was named as a joint account holder of that joint fixed deposit account.

[3] Less than a year after opening the account, on 5 March 2012, the late DYTM Tunku Malik was diagnosed with severe stage of dementia of alzheimer type and severe brain atrophy, along with other serious medical conditions. Report from Hospital Sultanah Bahiyah on 6 December 2018 indicated a worsening dementia condition and a decline in memory.

[4] The plaintiff premised that the late DYTM Tunku Malik executed a letter of *hibah* (gift) to give all trust monies/investment to the plaintiff and another person. However, the second defendant argued that this letter did not expressly include the joint fixed deposit account. The second defendant further avered that the plaintiff's claim for the money, asserted as 'pemberian ikhlas' (sincere gift) from the late Tunku Malik in the plaintiff's affidavit, is essentially a claim for *hibah*.

[5] The second defendant further posits that the account was opened and the joint account mandate signed under the plaintiff's undue influence, given the late Tunku Malik's deteriorating mental health and lack of cognitive capacity to enter a contract.

[6] The late DYTM Tunku Malik passed away on 29 November 2015. On the same day, the *Jemaah Pemangku Sultan Kedah* issued a written instruction to all financiers and banks to freeze all accounts (personal or joint) belonging to the late DYTM Tunku Malik. This instruction was communicated to the first defendant on 30 November 2015.

[7] For nearly three years after the freezing of the account, the plaintiff remained silent and did not claim the monies in the joint fixed deposit account as his asset.

[8] On 26 June 2018, the second defendant, who is the late DYTM Tunku Malik's niece, was appointed as the administratrix of the late DYTM Tunku Malik's estate by the High Court of Alor Setar.

[9] On the same day of the second defendant's appointment, the plaintiff's solicitors demanded the first defendant to release the monies in the joint fixed deposit account to the plaintiff. The first defendant refused, citing the freeze instructions and stating that proceeds would only be released upon joint instructions from the plaintiff and the lawful administrator of the estate.

[10] The second defendant had later obtained a court order from the High Court of Alor Setar to include the joint fixed deposit account as part of the amended list of assets of the late DYTM Tunku Malik's estate.

[11] On 15 June 2020, the plaintiff filed this suit against the first and second defendant, claiming a declaration and order that the plaintiff is entitled to withdraw all monies in the account based on the survivorship clause.

[12] The second defendant then filed this application so that several specific issues can be referred to the Kedah Shariah High Court (collectively 'these issues'):

(i) whether the money in the joint fixed deposit account (Account No 5003413704) held by the first defendant (CIMB Bank Bhd) is included in the estate of Almarhum DYTM Tunku Hj Abdul Malik Ibni Almarhum Sultan Badlishah that needs to be distributed to the heirs according to *faraid* and Islamic inheritance law;

(ii) whether there was any valid form of gift (*alang* or *pemberian*) made by Almarhum DYTM Tunku Hj Abdul Malik Ibni Almarhum Sultan Badlishah to the plaintiff regarding the money in the joint fixed deposit account (Account No 5003413704) held by the first defendant; and

(iii) whether the right of survivorship contained in the terms of opening the joint fixed deposit account by Almarhum DYTM Tunku Hj Abdul Malik Ibni Almarhum Sultan Badlishah and the plaintiff applies to the estate of DYTM Tunku Hj Abdul Malik Ibni Almarhum Sultan Badlishah according to *Shariah* law.

[13] Apart from the above, the second defendant in this application moves this court to grant the following orders:

(a) that the order or decision by Kedah Shariah High Court be applied and enforced by this court in the present civil action;

(b) that the full trial or the fixing of trial dates for the present action be stayed for a limited period pending disposal of Shariah proceedings; and

(c) that the other pre-trial directions may be given by this court under O 34 of the Rules of Court 2012 in order to avoid any delay of the present legal action.

SUBMISSION BY THE SECOND DEFENDANT

[14] The second defendant asserted that this application is made in good faith due to several reasons. First of all, there exists the jurisdictional necessity. The core dispute, particularly concerning the survivorship clause, involves the

determination of *Shariah* issues, such as the law of gifts (*hibah*) and Islamic inheritance law (*faraid*), which civil courts do not have competent jurisdiction to decide. The second defendant cited the Court of Appeal case of *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2006] 4 MLJ 705 to support this point.

[15] Secondly, the plaintiff in our present case is clearly claiming beneficial entitlement to the funds based on the doctrine of survivorship and an alleged 'pemberian ikhlas' (sincere gift) from the deceased. However, the second defendant contended that the survivorship clause does not automatically confer beneficial ownership.

[16] The second defendant also asserted that the funds in the joint account are part of the deceased's estate, which must be distributed according to *faraid* law. The second defendant has also obtained a court order to include the joint fixed deposit account as part of the amended list of asset of the late DYTM Tunku Malik's estate.

[17] Next, the second defendant raised the issue of incompetence of civil courts on Islamic law. That is to say, civil court judges are generally not equipped to decide complex issues of Islamic jurisprudence, such as the validity of a *hibah* or whether a survivorship clause contravenes *Shariah* law. The Shariah High Court possesses special jurisdiction over matters like *alang semasa hidup* (gift during lifetime) and inheritance. To support, the second defendant referred to *JRI Resources Sdn Bhd v Kuwait Finance House (M) Bhd (President of Association of Islamic Banking Institutions Malaysia & Anor, interveners)* [2019] 3 MLJ 561; [2019] 5 CLJ 569.

[18] Furthermore, the second defendant argued that a referral to the Shariah Court is necessary to avoid conflicting decisions between the civil and Shariah courts. The decision from the Shariah Court can then be applied and enforced by the civil court to resolve the civil disputes, including issues of negligence and breach of contract. For this, the second defendant relied on the judgment of *Mohamad Taupik Mohamad Nor & yang lain lwn Siti Rahman Mohd Noor & Yang Lain* [2025] MLJU 1927; [2016] CLJU 1462 to support her argument.

[19] The second defendant submitted that allowing the referral will not prejudice the plaintiff or the first defendant. The first defendant, as a bank, is only acting as a stakeholder and would not need to be involved in the Shariah proceedings.

[20] According to the learned counsel for the second defendant, this application aims to expedite the disposal of this case by clarifying the Shariah

issues first. The second defendant, as administratrix, has a duty to protect the rights of the deceased's lawful heirs under *faraid* law, especially given that one of the heirs is 94 years old and has yet to receive her entitlement.

SUBMISSION BY THE PLAINTIFF

[21] The gist of the plaintiff's submission is that the civil court, specifically the High Court, retains exclusive jurisdiction over the present matter.

[22] The plaintiff further submitted that the Shariah Court lacks the jurisdiction of these issues because the first defendant is a corporate entity and not a Muslim as explicitly envisaged by art 121(1A) of the Federal Constitution ('the FC').

[23] Moreover, the Shariah Courts (Kedah Darul Aman) Enactment 2008, s 24, also stipulates that no Shariah Court decision can affect the rights or property of a non-Muslim. The plaintiff heavily relied on the apex court's judgment of *Indira Gandhi a/p Mutho v Pengarah Jabatan Agama Islam Perak & Ors and other appeals* [2018] 1 MLJ 545; [2018] 3 CLJ 145 and few other authorities to support its submission.

[24] The plaintiff asserted that the original cause of action against the first defendant arose from the contractual terms agreed upon during the opening of the joint fixed deposit account.

[25] The plaintiff's claim is based on the first defendant's breach of the 'survivorship clause' contained within the contract, which dictates that upon the death of one account holder, the balance should be given to the surviving holder.

[26] Contract law is explicitly listed under the Federal List (List I, Ninth Schedule of the Federal Constitution), placing it within the civil court's jurisdiction. Therefore, the opening of a joint account, being contractual in nature, does not fall under the Shariah Court's jurisdiction.

[27] The plaintiff explicitly clarifies that their claim is not based on *hibah* (gift). The letter of hibah exhibited by the plaintiff was only meant to demonstrate that the late Tunku Malik had given other assets as gifts, not the joint fixed deposit account in question. The plaintiff's pleadings do not assert *hibah* as the basis of their claim for the joint account.

[28] Citing the judgment of *Public Bank Bhd v New Ace Digital Print Sdn Bhd & Anor* [2019] 3 MLJ 421; [2019] CLJU 294, the learned counsel for the plaintiff's asserted that contractual terms, especially a written survivorship

clause, must be interpreted according to their plain meaning, and extrinsic evidence of subjective intent should be inadmissible if the terms are unambiguous. The plaintiff argued that the clear terms of the account application and mandate bind all parties and entitle the plaintiff to the funds.

SUBMISSION BY THE FIRST DEFENDANT

[29] The first defendant, primarily opposed this application to refer Shariah questions to the Kedah Shariah High Court and to stay proceedings. Their core submissions focus on the civil court's exclusive jurisdiction over the dispute, the contractual nature of the claim, the prejudice caused by any stay of proceedings, and the limited role of Shariah courts in conventional banking matters.

FINDINGS AND DECISIONS OF THE COURT

[30] After appraising the facts adduced by the parties through affidavits and the exhibits, and the submissions by the learned counsels for all the parties, I partially allow this application, and order, that, only question (ii) of these issues is to be referred to Kedah Shariah High Court. Herein are my reasons.

[31] The crux issues to be determined by this court concerning this application revolve around the ownership and distribution of funds in a joint fixed deposit account, the applicability of a 'survivorship clause', and the jurisdiction of the civil versus Shariah courts over these matters. I shall discuss these issues separately.

Issue 1: Whether the money in the joint fixed deposit account held by the first defendant is included in the estate of late DYTM Tunku Malik that needs to be distributed to the heirs according to faraid and islamic inheritance law

[32] The second defendant's contention is that this issue/question falls squarely within the exclusive jurisdiction of the Shariah Court and is crucial in determining the beneficial ownership of the funds.

[33] In response, the plaintiff alleged that while the distribution of a Muslim's estate according to *faraid* is a matter for the Shariah Court, the broader issues of probate and administration fall under the Federal List and are within the jurisdiction of the civil courts. The purpose of a civil court in such matters is to grant administration and oversee the collection and distribution of assets.

[34] In other words, the mere involvement of Shariah principles does not automatically confer jurisdiction upon the Shariah Court, as the determination of legal disputes must be based on the subject matter and the applicable laws.

[35] I fully concur with learned counsel for the plaintiff that Shariah courts do not have the ultimate jurisdiction over disputes concerning the inheritance of testate or intestate property (a matter under the State List) when such disputes also involve probate and administration (a civil matter under the Federal List).

[36] While the Shariah Court may issue a *sijil faraid* to certified the beneficiaries and their shares/rights in the estates, the civil High Court is the forum for granting letters of administration and the handling of the administration aspect there in. This position was articulated by the Shariah Court of Appeal in *Jumaaton dan satu lagi lwn Raja Hizaruddin* [1998] 6 MLJ 556 where at p 561 Sheikh Ghazali CJ Shariah (WP) averred that:

> Sungguhpun Senarai 2 Jadual Kesembilan itu menyebut mengenai 'Hukum Syarak berhubung dengan mewaris harta berwasiat dan tidak berwasiat' dan 'pembahagian harta' apabila rujukan dibuat kepada Senarai 1 Senari Persekutuan Jadual Kesembilan itu ini tidak termasuk probet dan surat mentadbir pusaka. Perkara (e) perenggan (i) dalam Senarai Persekutuan itu menyebut bahawa Parlimen boleh membuat undang-undang antara lain mengenai 'perwarisan harta berwasiat dan tidak berwasiat, probet dan surat mentadbir kuasa'. Kemudian dalam bahagian (ii) perkara (a) itu disebut 'Perkara yang tersebut dalam perenggan (1) tidak termasuk undang-undang diri orang-orang Islam berhubung dengan 'pemberian atau perwarisan harta berwasiat dan tidak berwasiat'. Ini bermakna undang-undang mengenai 'probet dan surat mentadbir harta' dimasukkan dalam Senarai Persekutuan dan bukan 'Senarai Negeri' dan oleh kerana itu Badan Perundangan Negeri dan Mahkamah Shariah tidak mempunyai kuasa atau bidang kuasa dalam perkara 'probet dan surat mentadbir harta' itu. Inilah sebab undang-undang mengenai 'probet dan surat mentadbir' bagi semua orang di Malaysia terdapat dalam Akta Probet dan Pentadbiran 1959.
>
> *Sungguhpun semua pihak dalam kes ini adalah orang Islam namun demikian kuasa untuk mentadbir harta pusaka telah dibuat oleh Mahkamah Tinggi (Sivil). Ini disebabkan oleh kerana perkara 'probet dan surat mentadbir pusaka' diletakkan di bawah senarai kuasa perundangan Persekutuan (Senarai I Jadual Kesembilan kepada Perlembagaan Malaysia) dan tidak dikecualikan bagi orang Islam*. Oleh kerana itu, undang-undang mengenai probet dan pentadbiran pusaka terdapat dalam Akta Probet dan Pentadbiran 1959 ... (Emphasis added.)

[37] This principle laid down in *Jumaaton* was also recognised by our Court of Appeal in *Latifah bte Mat Zin*, where Abdul Aziz Mohamad JCA ruled:

> [24] ... The Shariah High Court, however, ruled that it did not have jurisdiction over the dispute. The Shariah Court of Appeal upheld the ruling. They took the view (at p 563C and G) that the matter of succession to or division and inheritance

> of the property of a deceased person involves probate and administration, which is not included in the matter of 'succession, testate and intestate' in item 1 of the State List. *Since probate and administration falls in the Federal List and not in the State List, it was held that the Shariah courts have no jurisdiction over the dispute*. (Emphasis added.)

[38] Therefore, the decision underscores the fact that even when Shariah principles are in question, the dispute must be determined by the civil courts if a federal matter is involved (see also *Indira Gandhi Mutho*).

[39] The purpose of a civil court in such matters is to grant administration and oversee the collection and distribution of assets. After all, the joint fixed deposit account has already been included in the amended list of assets of the late Tunku Malik's estate by an unchallenged High Court order dated 23 February 2020.

[40] Hence, should the funds ultimately be determined to be part of the estate, the civil court, as the administering court, would, after obtaining a *sijil faraid* from the Shariah Court, facilitate the proper distribution, in accordance with the *sijil faraid* to its rightful recipients.

[41] In the context of letters of administration that involve Muslims, the apex court in *Latifah bte Mat Zin v Rosmawati bte Sharibun & Anor* [2007] 5 MLJ 101, couldn't be clearer when Abdul Hamid Mohamad FCJ (later CJ) laid down the role of civil and Shariah courts in determining different questions in respect of their jurisdictions, as follows:

> [56] In the case of letters of administration (again I am only referring to non-small estates), an application is made to the civil High Court for the grant of a letter of administration. *When the letter of administration is obtained, the administrator is appointed, and in case of an estate of a Muslim, the administrator will obtain a 'Sijil faraid' from the Shariah court which states who are the beneficiaries and their respective shares, in accordance with Islamic law ...* (Emphasis added.)

[42] This approach avoids jurisdictional overlap while ensuring proper Islamic inheritance principles are applied at the distribution stage.

[43] Above all, the plaintiff asserted that the original cause of action against the first defendant arose from the contractual terms agreed upon during the opening of the joint fixed deposit account, and not *hibah.*

[44] As submitted by the plaintiff, the jurisdiction of the court should be determined by the nature of the relief sought (see *Siti Hasnah Vangarama Abdullah v Tun Dr Mahathir Mohamad (as the President of Perkim) & Ors* [2012] MLJU 1819; [2012] 7 CLJ 845).

[45] Since the plaintiff's original action is based on a breach of contract by the first defendant, it falls under civil jurisdiction, and thus no Shariah question arises.

[46] All these authorities are clear that in contractual disputes, the civil court is the determiner and not Shariah court. Thus, I hold that this question No 1 need not be referred to the Shariah court.

[47] The above judgment has reinforced the principle that civil and Shariah courts operate as co-equal and independent judicial systems within their respective constitutionally defined jurisdictions.

Issue 2: Whether there was any valid form of gift (alang or pemberian) made by the late DYTM Tunku Malik to the plaintiff regarding the money in the joint fixed deposit held by the first defendant

[48] The second defendant asserted that the civil court lacks competent jurisdiction to determine issues related to gifts (*hibah*) and Islamic inheritance law (*faraid*). The second defendant claimed that civil court judges should refrain from deciding complex issues of Islamic jurisprudence (see *JRI Resources*).

[49] They further argued that the Shariah Court is the appropriate forum for such matters, citing art 121(1A) of the FC and s 13(3)(b) of the Shariah Courts (Kedah Darul Aman) Enactment 2008.

[50] Specifically, s 13(3)(b) of the Shariah Courts (Kedah Darul Aman) Enactment 2008 confers jurisdiction to the Shariah High Court, reads as follows:

> 13 (b) dalam bidang kuasa malnya, mendengar dan memutuskan semua tindakan dan prosiding dalam mana semua pihak adalah orang Islam dan yang berhubung dengan —
>
> (i) pertunangan, perkahwinan, ruju', perceraian, pembubaran perkahwinan (fasakh), nusyuz, atau pemisahan kehakiman (mufaraqah) atau apa-apa perkara yang berkaitan dengan perhubungan di antara suami isteri;
>
> ....
>
> (iv) *alang semasa hidup, atau penyelesaian yang dibuat tanpa balasan yang memadai dengan wang atau nilaian wang, oleh seseorang Islam;* (Emphasis added.)

[51] The second defendant argued that the issue of 'alang semasa hidup' (gift during lifetime), which is synonymous with 'pemberian semasa hidup' or hibah, is a crucial Shariah question that must be referred to the Kedah Shariah High Court.

[52] The second defendant's counsel has also referred to the authentic *Kamus Dewan* (4th Ed) published by Dewan Bahasa dan Pustaka to establish that the word 'alang' means, 'hadiah, pemberian' in Bahasa Melayu. From the above, it is clear that Shariah High Court shall have competent jurisdiction to hear and decide issue pertaining to 'alang semasa hidup' or 'pemberian semasa hidup' or better known as 'hibah'.

[53] The second defendant pointed out that the plaintiff, in his own affidavit, expressly acknowledged that his claim to the money was premised on a 'pemberian ikhlas' (sincere gift) from the deceased, DYTM Tunku Hj Abdul Malik. On this basis, the second defendant construed the term 'pemberian ikhlas' as a form of hibah under Islamic law and contended that the plaintiff is bound by his own sworn statement and is now precluded from taking a contradictory position.

[54] Accordingly, learned counsel for the second defendant submitted that the question whether the plaintiff is beneficially entitled to the money by virtue of 'pemberian ikhlas' properly falls within the jurisdiction of the Shariah Court.

[55] In response, the plaintiff contended that the second defendant has misunderstood the nature of the plaintiff's claim and the relevance of the 'alang semasa hidup' concept to the joint fixed deposit account.

[56] The plaintiff clarified that his claim is not based on *hibah* regarding the joint fixed deposit account. The plaintiff further asserted that the letter of *hibah* dated 21 September 2012 (see exh WB1, encl 140), cited by the second defendant, refers to other properties and was merely adduced to demonstrate that the deceased had previously given gifts to the plaintiff due to their close relationship, not as evidence that the joint account itself was a *hibah.*

[57] In other words, the plaintiff reiterated that his lawsuit is fundamentally about the breach of contractual terms, specifically the survivorship clause, by the first defendant and hence, matters of contract fall under the Federal List of the Federal Constitution and are within the exclusive jurisdiction of the civil courts.

[58] The first defendant, citing *Public Bank Bhd*, averred that the survivorship clause is a written contractual term and its interpretation, validity, and enforceability are matters of contract law. Hence, the clause grants operational access to the survivor and enables the bank to obtain a good discharge upon payment, but it does not determine beneficial ownership. The question of beneficial ownership is a separate matter between claimants and the surviving account holder, not the bank.

[59] On this, I fully concur with the second defendant that *Public Bank Bhd* should be distinguished from this application, for two main reasons.

[60] Firstly, the *Public Bank Bhd* case did not involve any application of Shariah law on matters such as the law of gift (*hibah*) or Islamic law of succession (*faraid*).

[61] Secondly, the *Public Bank Bhd* case solely involved corporations and non-Muslims. In contrast, the current case involves Muslim parties (the plaintiff and the late DYTM Tunku Malik) regarding the beneficial ownership of funds, necessitating the consideration of Islamic law.

[62] Instead, it is the finding of this court that the Federal Court's decision in *Latifah Mat Zin* should be preferred and applied to the present case.

[63] Despite the plaintiff's claim being premised on contract law, as highlighted by the second defendant, the plaintiff himself, in his affidavit, admitted that his claim for the money was based on a 'pemberian ikhlas' (sincere gift) from the late DYTM Tunku Malik. Since 'pemberian ikhlas' means a form of gift or hibah in Islamic law, the plaintiff is bound by his own sworn statement. He cannot blow hot and cold at the same time.

[64] Therefore, the determination of whether the plaintiff is beneficially entitled to the money as a 'pemberian ikhlas' or hibah falls squarely within the jurisdiction of the Shariah Court, which is competent to decide on the law of gift.

[65] This indeed aligns with the principle affirmed in *Latifah bte Mat Zin* (Court of Appeal, later affirmed by the Federal Court), that a survivorship clause in a joint account merely entitles the survivor to receive the money and enables the bank to obtain a good discharge.

[66] However, it does not automatically confer beneficial ownership of the money to the survivor. The question of who is beneficially entitled to the money is a separate matter, not the bank's concern.

[67] For a Muslim's estate, the determination of beneficial ownership, especially when there's an alleged *hibah* or when the funds are listed as part of the estate to be distributed according to *faraid,* requires the application of Islamic inheritance law and the law of gifts.

[68] I am guided by the ratio of Abdul Hamid Mohamad FCJ (later CJ) in *Latifah bte Mat Zin* that such jurisdictional issues might necessitate 'double

proceedings', one in the civil court and another in the Shariah court, to achieve a final resolution and avoid conflicting decisions:

> [74] So, it is very clear that the determination *whether the assets in question had been given as a valid 'hibah' by the deceased to the appellant is a matter that falls within the jurisdiction of the Shariah Court*. The Court of Appeal was right on this point.
>
> [80] As a result, *jurisdictional problems that had not been envisaged have arisen. Some require double proceedings, one in the civil court and another in the Shariah court before a final decision may be made*. This causes delay and incurs unnecessary expenses. Others are outside the jurisdiction of both courts. These are not matters that the courts can solve as the courts owe their jurisdiction to statutes. It is for the legislature to step in, to decide as a matter of policy what should be the solution and legislate accordingly. (Emphasis added.)

[69] In our present case, the joint fixed deposit account of the late DYTM Tunku Malik has been inserted in the amended list of asset of the late DYTM Tunku Malik's estate. Hence, the second defendant is duty bound to protect the rights of the lawful heirs of the late DYTM Tunku Malik. Yet, the plaintiff is claiming his right over the joint fixed deposit account saying it is 'pemberian ikhlas', namely, hibah from the late DYTM Tunku Malik.

[70] It is undeniable that *hibah* is within the exclusive jurisdiction of the Shariah Court. Section 13(3)(b) of the Shariah Courts (Kedah Darul Aman) Enactment 2008 quoted earlier is crystal clear on this. Also, I am guided by the latest Federal Court's decision in *Dahlia Dhaima bt Abdullah v Majlis Agama Islam Selangor and another appeal* [2025] 1 MLJ 334 where Abang Iskandar PCA held:

> [170] First, my reason for saying this is that *the decisions of the Shariah Courts must be recognised and respected consistent with our own Federal Constitution that do recognise the hierarchy, role and function of the Shariah Courts*. In fact, the civil courts have long acknowledged this. This is illustrated by the cases decided by the former Federal Court Justice Mohd Zawawi Salleh and former Chief Justice of Malaysia Abdul Hamid Mohamed when they were at the Court of Appeal. The first case is *Syarifah Nooraffyzza bt Wan Hosen v Director of Jabatan Agama Islam Sarawak & Ors* [2018] 2 MLJ 354; [2018] 3 CLJ 620, where it is said:
>
> > [25] *We are of the view that Shariah Courts and civil courts form two separate legal system*. We agree with the view expressed by Salbiah Ahmed in her article entitled: 'Islam in Malaysia: Constitutional and Human Rights Perspectives', Muslim World Journal of Human Rights 2, No 1 (2005), when she asserts that:
> >
> > > *State Shariah Courts are not Courts inferior to the Federal Courts* as the term 'inferior court' is understood in terms of appeal and judicial review by superior courts over inferior courts. The State Shariah Courts are in a separate hierarchy to that of the federal civil courts. There is no right of appeal from the State Shariah Courts to the federal civil courts. There is no power of judicial review by the federal high court over the State Shariah Courts. (Emphasis added.)

[71] In short, since the parties involved here are Muslims (plaintiff and second defendant both of whom are claiming entitlement over the moneys held in the joint account), the determination on the law of gifts/*hibah* can only be adjudicated by the Shariah High Court, being court constituted under the State law as a court of competent jurisdiction under our Federal Constitution and being the court referred such jurisdiction by valid laws of the land. The civil court must honour such jurisdiction of the Shariah Court and recognise the relevant decision from the Shariah Court on point. Therefore, it is my finding that question/issue No 2 (concerning *hibah*) must be reffered to the Shariah Court.

Issue 3: Whether the right of survivorship contained in the terms of opening the joint fixed deposit account by the late DYTM Tunku Malik and the plaintiff applies to the estate of the late DYTM Tunku Malik according to Shariah law

[72] The core of the plaintiff's claim and the first defendant's defence, revolves around the contractual interpretation and effect of the survivorship clause within the banking agreement.

[73] It is trite that banking and contract law are matters listed under the Federal List of the Ninth Schedule of the Federal Constitution and fall within the exclusive jurisdiction of the civil court.

[74] Crucially, it was undisputed that the first defendant, CIMB Bank Bhd, is a corporate entity registered under the Malaysian Companies Act. A corporate entity is incapable of professing any religion, and therefore, cannot be subjected to Shariah Court jurisdiction.

[75] While the second defendant argued that the survivorship clause may contravene Shariah inheritance principles, the jurisdiction of the Shariah courts are explicitly limited to having jurisdiction only over persons professing the religion of Islam. Section 24 of the Shariah Court (Kedah Darul Aman) Enactment 2008 expressly states that no decision of the Shariah Court can involve any rights or property of a non-Muslim. Thus, subjecting first defendant to the Shariah proceedings would be unlawful and unconstitutional.

[76] This principle has been consistently affirmed by the Federal Court, holding that if any party is a non-Muslim, the Shariah Court has no jurisdiction over the case, even if the subject matter might fall within its general purview.

[77] The Federal Court in *Subashini a/p Rajasingam v Saravanan a/l Thangathoray and other appeals* [2008] 2 MLJ 147 could not be clearer when Nik Hashim FCJ held at [95] that:

> ... before a Shariah Court may concern a subject matter that is within the jurisdiction of the Shariah Courts, *the Shariah Courts will have no jurisdiction in respect of the case if the parties, or any of the parties, is not a Muslim*, because exercising jurisdiction in the case will necessarily involve exercising jurisdiction over the non-Muslim parties or party, which jurisdiction the Shariah Courts are denied. (Emphasis added.)

[78] This principle was later reaffirmed by *Iki Putra bin Mubarak v Kerajaan Negeri Selangor & Anor* [2021] 2 MLJ 323, when Abang Iskandar CJ Sabah and Sarawak (later PCA) emphasised that the Shariah Court only has power over cases where all parties are Muslims:

> [63] ... So, to take the example given earlier, *if one of the parties is a non-Muslim, the Shariah court does not have jurisdiction over the case, even if the subject matter falls within its jurisdiction*. (Emphasis added.)

[79] For this purpose, corporate entities are considered incapable of professing a religion, as clarified by the Court of Appeal in *Jabatan Agama Islam Wilayah Persekutuan & Ors v Berjaya Books Sdn Bhd & Ors* [2015] 3 MLJ 65 as follows:

> [27] (h) (iv)... There is no 'personal' law of the first respondent as it is a creature of statute and does not profess any religion. *Only a natural person can profess a religion* ...
>
> ...
>
> [31] (f) ... *no action whatsoever can be taken against the first respondent as it is a corporate entity and incapable of professing a religion. The action taken against the first respondent was unlawful* ... (Emphasis added.)

[80] Based on the above, a corporate entity registered under the Companies Act is incapable of professing a religion. The Court of Appeal ruling actually reaffirms the position stated by the High Court in *Potensi Bernas Sdn Bhd v Datu Badaruddin Datu Mustapha* [2009] MLJU 1972; [2009] 8 CLJ 573 as follows:

> [16] There is no dispute that the plaintiff company consists of both Muslim and non-Muslim shareholders. In fact, the majority shareholder is a non-Muslim. The defendant's contention that the Shariah High Court has jurisdiction over the plaintiff is based solely on the fact that Datu Amir Kahar, a shareholder in the company is a Muslim. This argument is untenable. Clearly the property is not the personal property of Datu Amir Kahar. It is not even registered in his name. *It belongs to the company which, being a creature of statute does not profess any religion. Only natural persons can profess a religion*. Therefore, the injunction order restraining the plaintiff from dealing with the property is not only manifestly unjust to the non-Muslim shareholders of the plaintiff but is also null and void for want of jurisdiction. (Emphasis added.)

[81] Hence, the above reasoning of the Court of Appeal is particularly pertinent, as it establishes that legal entities such as corporations do not possess religious identities and, consequently, cannot fall within the ambit of religious legal frameworks.

[82] Besides, the recent Federal Court majority decision in *SIS Forum (M) & Anor v Jawatankuasa Fatwa Negeri Selangor & Ors* [2025] 4 MLJ 625; [2025] 7 CLJ 179, albeit concerning corporation/society in holding that the Shariah Court only has jurisdiction over natural person, has further confirmed this.

[83] In applying the principles from the cited authorities to the present case, it is clear that the first defendant, being a corporate entity incorporated under the Companies Act, lacks the capacity to profess any religion. As such, it falls outside the jurisdiction of the Shariah Court. Any attempt to subject the first defendant to Shariah proceedings would therefore be both unlawful and unconstitutional.

[84] The plaintiff and the first defendant also premised that, to which I agree, the dispute in this case primarily involves civil matter (banking and contract law), not Islamic law. The core dispute concerns the interpretation, validity, and applicability of the 'survivorship clause' in the joint fixed deposit account. This falls squarely within the realm of banking and contract law, which are civil matters explicitly governed by the Federal List (List I, Ninth Schedule of the Federal Constitution).

[85] The High Court in *Arab-Malaysian Finance Bhd v Taman Ihsan Jaya Sdn Bhd & Ors (Koperasi Seri Kota Bukit Cheraka Bhd, third party)* [2008] 5 MLJ 631 (note that the Court of Appeal had later overruled the other decision of this case) had affirmed that banking matters fall under the Federal List when Abdul Wahab Patail J held that:

> [3] The introduction of Islamic financing in Malaysia is complicated by this country's constitutional arrangements. Article 74 of the Federal Constitution of Malaysia provides that *finance, including banking, moneylending, pawnbrokers, control of credit, as well as trade, commerce and industry are subject matters within the federal list, while matters relating to the religion of Islam are within the states list.* Cases involving the former are within the jurisdiction of the civil courts, while those involving the latter, but only so far as it concerns the matters in para 1 of the states list in Schedule 9, are within the jurisdiction of the Shariah Courts.
>
> [4] This jurisdictional limitation in respect of the states and the Shariah Courts means that *cases involving Islamic financing in Malaysia remain within the Federal legislative jurisdiction, and cases relating thereto are brought in the civil courts*. No legislation in the form of Islamic laws has been made for trade and financing based upon Islamic principles. The only provision is that there be no element involved which is not approved by the religion of Islam. (Emphasis added.)

[86] This ruling reinforces the constitutional position that banking law and disputes including matters related to Islamic financing, falls exclusively within the legislative competence of the Federal Government and the jurisdiction of the civil courts.

[87] Accordingly, any dispute concerning banking law must be adjudicated by the civil courts, and the Shariah courts have no jurisdiction over such matters. Additionally, the first defendant submitted that the validity and applicability of the 'survivorship clause' is an issue to be determined by the civil courts and not the Shariah courts.

[88] The first defendant also suggested that the 'survivorship clause' is not applicable to Muslims. Hence, the first defendant contends that the determination of a 'survivorship clause' falls within the realm of contract law, which is also a matter of federal jurisdiction.

[89] The plaintiff's claim against the first defendant is based on the breach of contractual terms, specifically that the first defendant has failed to adhere to the survivorship clause by freezing the account. The terms of the contract stipulate that upon the death of one account holder, the balance should be paid to the survivor.

[90] The 'survivorship clause' is a written contractual term that must be interpreted according to its plain meaning under contract law. It merely grants operational access and enables the bank to obtain a good discharge by paying the survivor; it does not conclusively determine beneficial ownership. The issue of rightful beneficial ownership is a separate question, not the concern of the bank or banking law, and is to be determined in separate proceedings between the claimant and the surviving account holder (see *Latifah bte Mat Zin* and *Public Bank Bhd*).

[91] Furthermore, the Court of Appeal in *Pathmanathan a/l Krishnan (also known as Muhammad Riduan bin Abdullah) v Indira Gandhi a/p Mutho and other appeals* [2016] 4 MLJ 455 unequivocally held that where Shariah principles are engaged but the subject matter falls outside the jurisdiction of the Shariah Court, the civil courts retain exclusive jurisdiction. As per Balia Yusof JCA:

> [153] (b) ... *If the subject matter is not within the Shariah Court but Shariah principles are involved, the civil courts are the sole arbiter under the Federal Constitution*. For example, Islamic banking matter, probate and administration matter, etc. (Emphasis added.)

[92] Be that as it may, the above case authorities demonstrate that civil courts remain the competent forum for disputes even where Shariah principles are

relevant, provided that the subject matter falls within federal jurisdiction, such as banking, contract law or probate and administration. I thus hold that this issue No 3 is not to be referred to the Shariah court.

Reference to the Shariah Advisory Council (SAC) of Bank Negara Malaysia?

[93] At paras 51 and 52 of plaintiff's affidavit-in-reply at encl 140, plaintiff has made an alternative argument that the encl 129 should be dismissed on the basis that any reference on Shariah question should be channeled to the Shariah Advisory Council ('SAC') of Bank Negara Malaysia ('BNM') under Central Bank of Malaysia Act 2009 ('the CBMA').

[94] Regarding this alternate argument, I agree with the second defendant's submission that the plaintiff's contention is untenable as the fixed deposit joint account in our present case involve conventional banking and not Islamic banking. Hence, the SAC is not the proper forum.

[95] Section 56 of CBMA clearly provides that:

> (1) Where in any proceedings relating to *Islamic financial business* before any court or arbitrator any question arises concerning a Shariah matter, the court or the arbitrator, as the case may be, shall
>
> (a) take into consideration any published rulings of the Shariah Advisory Council; or
>
> (b) refer such question to the Shariah Advisory Council for its ruling.
>
> (2) Any request for advice or a ruling of the Shariah Advisory Council under this Act or any other law shall be submitted to the secretariat. (Emphasis added.)

[96] The above provision stipulates clearly that reference to the SAC is only confined to proceedings relating to Islamic financial business. In our present case, this court take judicial notice that the first defendant is licensed as a conventional bank under Financial Services Act 2013 ('the FSA') and not under Islamic Financial Services Act 2013 ('the IFSA'). There is also nothing forwarded by the parties to indicate that this joint fixed deposit account is operated under the Islamic window of the first defendant. As such, SAC shall have no jurisdiction over conventional banking business.

[97] In any event, I am in full agreement with the second defendant that the real dispute in our present case involves application of law of gift/*hibah* and Islamic law of succession (which fall under State List) whereas SAC's statutory duty is confined to ascertainment of Islamic law for disputes concerning Islamic financial business. Thus, again the SAC of BNM has no business in this present dispute.

[98] Based on the above, plaintiff's argument to refer these issues to the SAC of BNM must be rejected as the SAC, nor any civil courts to that extend, cannot be permitted to encroach, or usurp the role of Shariah Court in determining law of gift and Muslim's inheritance law. The ratio of Abg Iskandar CJ Sabah and Sarawak (later PCA) in *Iki Putra* concerning the sanctity of the Shariah Court is authoritative on this.

CONCLUSION

[99] I hereby partially allow this application, in order to strike a balance between respecting the distinct and equal jurisdiction of the Shariah Courts on matters of Islamic personal law, particularly *hibah,* and maintaining the civil court's clear jurisdiction over federal matters such as banking and contract law.

[100] The determination of issue No 2, by the Shariah Court, that is, whether the monies in the joint fixed deposit account were a valid *hibah* will be crucial in ascertaining the beneficial ownership of the funds, will assist this court in its final judgment on the plaintiff's claim and the second defendant's counterclaim.

[101] To sum up, out of the three questions proposed by the second defendant, I only allow and order that the second question concerning the *hibah* be referred to the Shariah Court for its determination. The further proceeding of this case is hereby stayed pending the outcome over there. Once the case in the Shariah Court is adjudicated, the proceeding in our present case would resume and this court shall determine the entire case through a full trial conducted thereafter. The issues concerning survivorship and the beneficial ownership of the money in the joint fixed deposit account and to whom the first defendant shall release the money in the joint fixed deposit account would be determined thereafter.

Enclosure 129 allowed in part.

Reported by Dzulqarnain Ab Fatar